

AMENDED IN ASSEMBLY APRIL 4, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1444

Introduced by Assembly Member Maddox

February 23, 2001

An act to amend Sections 2068, 2585, and 2586 of the Business and Professions Code, *and to amend Section 10176.25 of the Insurance Code*, relating to nutritional advice.

LEGISLATIVE COUNSEL'S DIGEST

AB 1444, as amended, Maddox. Nutritional advice.

Existing law does not prohibit a person from providing nutritional advice. Existing law allows a registered dietitian with a referral by an appropriate health care provider to provide nutritional and dietary counseling, assessments, and treatment.

This bill would provide that developing nutritional and dietary treatments, therapeutic diets, or developing or providing medical nutrition therapy without an express grant of statutory authority is a violation of law punishable by imprisonment. The bill would authorize a registered dietitian to *order medical laboratory tests related to nutritional therapeutic treatments and* accept or transmit verbal or electronically transmitted orders or protocols from a health care provider in order to implement therapeutic treatments. The bill would term the services described above that a registered dietitian is authorized to perform “medical nutrition therapy.” *The bill would authorize a dietetic technician, registered, meeting certain qualifications, to assist a registered dietitian with certain services. The bill would make conforming changes to the Insurance Code.*

Because developing nutritional and dietary treatments, therapeutic diets, or developing or providing medical nutrition therapy without a grant of statutory authority would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would become operative July 1, 2003.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2068 of the Business and Professions
2 Code is amended to read:

3 2068. This chapter shall not be construed to prohibit any
4 person from providing nutritional advice or giving advice
5 concerning proper nutrition. However, this section confers no
6 authority to practice medicine or surgery or to undertake the
7 prevention, treatment, or cure of disease, pain, injury, deformity,
8 or physical or mental conditions or to state that any product might
9 cure any disease, disorder, or condition in violation of any
10 provision of law. Absent an express grant of authority in this
11 division, developing nutritional and dietary treatments,
12 therapeutic diets, or developing or providing medical nutrition
13 therapy, constitutes a violation of Section 2053.

14 For purposes of this section, the terms “providing nutritional
15 advice or giving advice concerning proper nutrition” mean the
16 giving of information as to the use and role of food and food
17 ingredients, including dietary supplements.

18 Any person in commercial practice providing nutritional advice
19 or giving advice concerning proper nutrition shall post in an easily
20 visible and prominent place in his or her place of business the
21 following statement:
22



“NOTICE”

“State law allows any person to provide nutritional advice or give advice concerning proper nutrition—which is the giving of advice as to the role of food and food ingredients, including dietary supplements. This state law does NOT confer authority to practice medicine or to undertake the diagnosis, prevention, treatment, or cure of any disease, pain, deformity, injury, or physical or mental condition and specifically does not authorize any person other than one who is a licensed health practitioner to state that any product might cure any disease, disorder, or condition.”

The notice required by this section shall not be smaller than 8¹/₂ inches by 11 inches and shall be legibly printed with lettering no smaller than ¹/₂ inch in length, except the lettering of the word “NOTICE” shall not be smaller than 1 inch in length.

SEC. 2. *Section 2585 of the Business and Professions Code is amended to read:*

2585. (a) ~~Any person representing himself or herself as a dietitian shall meet either of the qualifications in paragraph (1) or (2), or both:~~

~~(1) Been granted, prior to January 1, 1981, the right to use the term “dietitian” by a public or private agency or institution recognized by the State Department of Health Services as qualified to grant that title, provided that person continues to meet all requirements and qualifications periodically prescribed by the agency or institution for the maintenance of that title.~~

~~(2) Possess all of the following qualifications:~~

~~(A) Be 18 years of age or older.~~

~~(B) Satisfactory completion of appropriate academic requirements for the field of dietetics and related disciplines and receipt of a baccalaureate or higher degree from a college or university accredited by the Western Association of Schools and Colleges or other regional accreditation agency.~~

~~(C) Satisfactory completion of a program of supervised clinical experience of not less than six months in length that is designed to prepare entry level practitioners through instruction and assignments in a clinical setting. Supervisors of the program shall meet minimum qualifications established by public or private~~

1 ~~agencies or institutions recognized by the State Department of~~
2 ~~Health Services to establish such qualifications.~~

3 ~~(b)~~ Any person representing himself or herself as a registered
4 dietitian shall meet one of the following qualifications:

5 (1) Been granted, prior to January 1, 1981, the right to use the
6 term “registered dietitian” by a public or private agency or
7 institution recognized by the State Department of Health Services
8 as qualified to grant the title, provided that person continues to
9 meet all requirements and qualifications periodically prescribed
10 by the agency or institution for the maintenance of that title.

11 (2) Possess all of the following qualifications:

12 ~~(A) Satisfactory completion of the requirements set forth in~~
13 ~~subdivision (a). Be 18 years of age or older.~~

14 *(B) Satisfactory completion of appropriate academic*
15 *requirements for the field of dietetics and related disciplines and*
16 *receipt of a baccalaureate or higher degree from a college or*
17 *university accredited by the Western Association of Schools and*
18 *Colleges or other regional accreditation agency.*

19 *(C) Satisfactory completion of a program of supervised clinical*
20 *experience of not less than six months in length that is designed to*
21 *prepare entry level practitioners through instruction and*
22 *assignments in a clinical setting. Supervisors of the program shall*
23 *meet minimum qualifications established by public or private*
24 *agencies or institutions recognized by the State Department of*
25 *Health Services to establish those qualifications.*

26 ~~(B)~~

27 *(D) Satisfactory completion of an examination administered*
28 *by a public or private agency or institution recognized by the State*
29 *Department of Health Services as qualified to administer the*
30 *examinations.*

31 ~~(C)~~

32 *(E) Satisfactory completion of continuing education*
33 *requirements established by a public or private agency or*
34 *institution recognized by the State Department of Health Services*
35 *to establish the requirements.*

36 *(b) Any person representing himself or herself as a dietetic*
37 *technician, registered shall possess all of the following*
38 *qualifications:*

39 *(1) Be 18 years of age or older.*

1 (2) *Satisfactory completion of appropriate academic*
2 *requirements and receipt of an associate's degree or higher from*
3 *a college or university accredited by the Western Association of*
4 *Schools and Colleges or other regional accreditation agency.*

5 (3) *Satisfactory completion of the dietetic technician program*
6 *requirements by an accredited public or private agency or*
7 *institution recognized by the State Department of Health Services*
8 *including not less than 450 hours of supervised clinical*
9 *experience.*

10 (4) *Satisfactory completion of an examination administered by*
11 *a public or private agency or institution recognized by the State*
12 *Department of Health Services to administer the examination.*

13 (5) *Satisfactory completion of continuing education*
14 *requirements established by a public or private agency or*
15 *institution recognized by the State Department of Health Services*
16 *to establish the requirements.*

17 (c) It is a misdemeanor for any person not meeting the criteria
18 of subdivision (a) or (b) to use, in connection with his or her name
19 or place of business, the words "*dietetic technician, registered,*"
20 "*dietitian,*" "*dietician,*" "*registered dietitian,*" "*registered*
21 *dietician,*" or the letters "~~D,~~" "*RD,*" "*DTR,*" or any other words,
22 letters, abbreviations, or insignia indicating or implying that the
23 person is a dietitian, or *dietetic technician, registered or* registered
24 dietitian, or to represent, in any way, orally, in writing, in print or
25 by sign, directly or by implication, that he or she is a dietitian or
26 a *dietetic technician, registered or* a registered dietitian.

27 (d) Any person employed by a licensed health care facility as
28 a registered dietitian on the effective date of this chapter may
29 continue to represent himself or herself as a registered dietitian
30 while employed by a licensed health care facility, if he or she has
31 satisfied the requirements of either paragraph (1) or paragraph (2)
32 of subdivision ~~(b)~~ (a), except that he or she shall not be required
33 to satisfy the examination requirement of subparagraph (B) of
34 paragraph (2) of subdivision ~~(b)~~ (a).

35 ~~Upon~~ (e) ~~Notwithstanding any other provision of law or~~
36 ~~regulation that limits reimbursement to state licensed health care~~
37 ~~providers and upon referral by a physician and surgeon, dietitians,~~
38 ~~registered dietitians, or other nutritional professionals with a~~
39 ~~master's or higher degree in a field covering clinical nutrition~~
40 ~~sciences, from a college or university accredited by a regional~~

1 accreditation agency, who are deemed qualified to provide these
2 services by the referring physician and surgeon, may be
3 reimbursed for the nutritional advice or advice concerning proper
4 nutrition as set forth in Section 2068, or for the nutritional
5 assessments, counseling, and treatments as set forth in Section
6 2586, ~~notwithstanding any other provision of law or regulation~~
7 ~~that limits reimbursement to state licensed health care providers.~~
8 Nothing in this section shall be construed to mandate direct
9 reimbursement of ~~—dietitians~~, registered dietitians, or other
10 nutrition professionals described in this subdivision, as a separate
11 provider type under the Medi-Cal program, nor to mandate
12 reimbursement where expressly prohibited by federal law or
13 regulation.

14 SEC. 3. Section 2586 of the Business and Professions Code is
15 amended to read:

16 2586. (a) Notwithstanding any other provision of law, a
17 registered dietitian, *or other nutritional professional* meeting the
18 qualifications set forth in *subdivision (e) of* Section 2585 may,
19 upon referral by a health care provider authorized to prescribe
20 dietary treatments, provide nutritional and dietary counseling,
21 conduct nutritional and dietary assessments, develop nutritional
22 and dietary treatments, including therapeutic diets, *order medical*
23 *laboratory tests related to nutritional therapeutic treatments*, and
24 accept or transmit verbal or electronically transmitted orders or
25 standards of protocol from the health care provider to implement
26 therapeutic treatments, for individuals or groups of patients in
27 licensed institutional facilities or in private office settings. The
28 referral shall be accompanied by a written prescription signed by
29 the health care provider detailing the patient's diagnosis and
30 including a statement of the desired objective of dietary treatment.
31 The services described in this subdivision may be termed
32 "medical nutrition therapy."

33 (b) (1) *Notwithstanding any other provision of law, a dietetic*
34 *technician, registered meeting the qualifications set forth in*
35 *Section 2585 may, under the direct supervision of a registered*
36 *dietitian, assist in the implementation or monitoring of services*
37 *specified in subdivision (a), but may not develop nutritional or*
38 *dietary therapy or treatments.*

39 (2) *For purposes of this subdivision, 'direct supervision' means*
40 *the supervising registered dietitian shall be physically available to*

1 *the dietetic technician, registered for consultation whenever is*
2 *required.*

3 (3) *For purposes of this subdivision, a registered dietitian shall*
4 *not supervise more than two dietetic technicians, registered at one*
5 *time.*

6 (c) It is a misdemeanor for a registered dietitian to practice in
7 a manner inconsistent with the requirements set forth in this
8 section.

9 ~~(e)~~

10 (d) Nothing in this section shall preclude a registered dietitian
11 from providing information as permitted by Section 2068.

12 ~~(d)~~

13 (e) For purposes of this section, “health care provider” means
14 any person licensed or certified pursuant to this division, or
15 licensed pursuant to the Osteopathic Initiative Act.

16 ~~(e)~~

17 (f) The requirement of a written prescription shall be deemed
18 to be satisfied by an entry in the patient records of a patient who
19 is undergoing treatment at a licensed health care facility if the
20 contents of the patient records reflect the information required by
21 this section.

22 ~~SEC. 3.~~

23 *SEC. 4. Section 10176.25 of the Insurance Code is amended*
24 *to read:*

25 10176.25. (a) As an alternative to an exclusion permitted by
26 Section 10176, a disability insurance policy may provide that
27 services of ~~a dietitian or a~~ registered dietitian *or other nutrition*
28 *professional* meeting the qualifications prescribed by Section
29 2585 of the Business and Professions Code will be paid only if
30 rendered pursuant to a method of treatment prescribed by a person
31 holding a physician’s and surgeon’s certificate issued by the
32 Medical Board of California.

33 (b) Nothing in this section requires disability insurers to
34 automatically pay for services provided by ~~a dietitian or a~~
35 registered dietitian *or other nutrition professional.*

36 *SEC. 5. This act shall become operative on July 1, 2003.*

37 *SEC. 6. No reimbursement is required by this act pursuant to*
38 *Section 6 of Article XIII B of the California Constitution because*
39 *the only costs that may be incurred by a local agency or school*
40 *district will be incurred because this act creates a new crime or*

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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